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10-CV-05005-ORD

THE HONORABLE JUDGE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATTI BINGHAM, CODY BINGHAM,

Plaintiffs,

v.

BLAIR LLC, BLAIR CORPORATION,

Defendants.

No. 3:10-cv-05005 RBL

PROTECTIVE ORDER

PROTECTIVE ORDER

The parties have consented to the entry of this Order concerning all information, documents, or material which have been or will be produced or provided in this litigation pursuant to any and all requests for such information, documents, or materials by any party under the Federal Rules of Civil Procedure, as defined herein. With the parties in agreement as to the terms of this Order, it is hereby ORDERED as follows:

1. The terms and conditions of this Order shall govern the production and handling of documents, answers or responses to interrogatories, responses to requests for admissions, depositions, pleadings, exhibits, other discovery taken pursuant to the Federal Rules of Civil

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1 Procedure, and all other information exchanged by the parties or received from any third party
2 in response to discovery requests or subpoenas.

3 2. All information, documents, and materials produced by any named Party, which
4 information or documents are identified by the producing party as CONFIDENTIAL
5 INFORMATION (hereinafter, "CONFIDENTIAL"), shall be deemed confidential and shall not
6 be used for any purpose other than this litigation and shall not be disclosed or revealed in any
7 manner, directly or indirectly, to anyone except as provided herein, as limited by the language
8 set forth in Paragraph 3.

9 3. The designation "CONFIDENTIAL" shall be limited to information that any
10 producing party, including any third party, in good faith, believes to contain (a) proprietary
11 information, commercially sensitive information (commercially sensitive information being
12 defined as financial, commercial, scientific or technical information whose disclosure would
13 reasonably be expected to result in a material financial loss or gain to the person or entity to
14 whom the information relates, or could prejudice the competitive position of that person or
15 entity in the conduct of his, her, or the entity's profession or business), including (as examples
16 but not limitations) pricing information, procedures, customer lists, marketing plans and
17 methods, business planning and financial information; (b) personal financial or medical
18 information (such as "protected health information" as defined by 45 CFR § 164.501 or
19 "individually identifiable health information" as defined by 45 CFR § 160.103, or is otherwise
20 protected from disclosure by the Privacy Act, 5 U.S.C. § 552a or the Health Insurance
21 Portability and Accountability Act of 1996); (c) trade secrets; and (d) information that should
22 otherwise be subject to protective treatment under Rule 26 of the Federal Rules of civil
23 Procedure. The designation "CONFIDENTIAL" does not include information or materials
24 available to the public, including, without limitation, copies of lawsuits filed and responses to
25 same; discovery in any litigation not previously designated confidential by Order of any Court;
catalogs; marketing brochures; press releases; advertising materials in any format; prior or
current website content; newsletters in print, email, or other format.

4. Information designated as "CONFIDENTIAL" may be disclosed only to the
following persons:

1 (a) Parties and counsel of record (and employees of counsel of record) in the
2 lawsuit of Patti Bingham and Cody Bingham v. Blair LLC, et al., Docket No. 3:10-cv-
3 05005RBL.

4 (b) In-house or general corporate counsel of parties to this case (and their staff
5 employees).

6 (c) Court reporters, interpreters, translators, copy services, graphic support services,
7 document imaging services, and database/coding services retained by counsel. (d)

8 Potential or actual experts or consultants who are retained by any attorney described in
9 Paragraphs 4(a) and 4(b) to assist with any Blair Robe litigation currently filed in state or
10 federal court in any jurisdiction, who are not a current employee of a Party or subsidiary or
11 affiliate of a Party, and who execute a Certification attached hereto as Exhibit A;

12 (e) Any actual or potential trial or deposition witness who needs or reasonably may
13 need to review "CONFIDENTIAL" information for testimony in this case and who executes a
14 Certification attached hereto as Exhibit A;

15 (f) Any private mediators used in any Blair Robe litigation filed in state or federal
16 court, provided such person executes a Certification attached hereto as Exhibit A;

17 (g) The Court, and any Special Masters and/or Mediators appointed by the Court;
18 and

19 (h) Representatives or attorneys for any insurance carrier currently providing
20 coverage, whether pursuant to a reservation of rights or otherwise, on behalf of any defendant
21 in the case of Patti Bingham and Cody Bingham v. Blair LLC, et al., Docket No. 3:10-cv-
22 05005RBL, or other similar or related lawsuits involving injuries allegedly caused while
23 wearing a Blair Robe.

24 (i) Counsel representing any party alleged to be injured in an incident involving a
25 Blair Chenille Robe. Such disclosure may be made only after the counsel receiving the
26 material agrees in writing to be bound by the provision in this Order and the jurisdiction of this
27 Court by executing the Certification attached as Exhibit "A".

28 5. "Disclose" or "disclosure" shall mean not only the sharing, dissemination, or
29 publication of a document, item, or any tangible thing, but shall also apply to the information

1 contained within any such document, item, or tangible thing, and includes a description or
2 indirect reference to such contents. Disclosure, as addressed by this Order, includes any
3 communication, in any form, regarding any information sought hereby to be protected.

4 6. All information designated "CONFIDENTIAL" in accordance with the terms of
5 this Order and produced or exchanged in the course of this case shall be used or disclosed
6 solely for the purpose of prosecution or defense of cases involving injuries allegedly caused
7 while wearing a Blair Robe and in accordance with the provisions of this Order. Such
8 "CONFIDENTIAL" information shall not be used for any business purpose, or for any other
9 purpose, except by court order or otherwise required by law. The foregoing notwithstanding,
10 this Order has no effect on, and its scope shall not extend to any Party's use of its own
11 "CONFIDENTIAL" information.

12 7. No person or entity other than counsel of record (or staff employees thereof) in
13 this case may disclose "CONFIDENTIAL" information to any other person.

14 8. The recipient of any "CONFIDENTIAL" information shall maintain such
15 information in a secure and safe area and shall exercise the same standard of due and proper
16 care with respect to the storage, custody, use and/or dissemination of such information as is
17 exercised by the recipient with respect to his or her own confidential, financial, or proprietary
18 information.

19 9. "CONFIDENTIAL" information may include or be included in any document,
20 physical object, tangible thing, transcript or oral testimony or recorded statement of counsel,
21 such as, by way of example and not limitation, transcripts, answers to interrogatories and other
22 responses to discovery requests, pleadings, briefs, summaries, notes, abstracts, motions,
23 drawings, photographs, video depictions, sound recordings, illustrations, diagrams, blueprints,
24 journal entries, logbooks, compositions, devices, test reports, programs, code, commands,
25 electronic media, databases, and any other records and reports which comprise, embody or
summarize information about the producing party's business, products, practices, procedures,
or health.

1 10. In designating information as "CONFIDENTIAL," the producing or testifying
2 party or person, including third parties, will make such designation only as to that information
3 that it believes is "CONFIDENTIAL" and falls within the language of this Order.

4 11. All or any part of a document, tangible item, discovery response or pleading
5 disclosed, produced, or filed by any Party in this case may be designated as
6 "CONFIDENTIAL" by the producing or disclosing party marking the appropriate legend on
the face of the document and each page so designated.

7 12. The parties may designate the deposition testimony and exhibits (or portions
8 thereof) of any witness in this case as "CONFIDENTIAL" at the time of the deposition by
9 advising the court reporter and all parties of such fact during the deposition. If any portion of a
10 videotaped deposition is designated "CONFIDENTIAL" pursuant to this Paragraph, the
11 videocassette or other storage media containing a recording of the deposition shall be labeled
12 with the appropriate legend. Unless a shortened time period is requested as set forth below,
13 within thirty (30) days of receipt of the transcript, the deponent, his/her counsel, or any other
14 party may designate all or portions of the transcript "CONFIDENTIAL." The deponent, his/her
15 counsel or any other party shall list on a separate piece of paper the numbers of the pages of the
16 deposition transcript containing "CONFIDENTIAL" information and serve the same on
17 opposing counsel. Pending such designation, the entire deposition transcript, including
18 exhibits, shall be deemed "CONFIDENTIAL" information. If no designation is made within
19 thirty (30) days after receipt of the transcript, the transcript (including exhibits) shall be
20 considered not to contain any "CONFIDENTIAL" information (although any exhibit which
was previously designated as "CONFIDENTIAL" shall remain so notwithstanding any failure
to so designate pursuant to this paragraph).

21 13. Any documents or pleadings to be filed with the Court that contain
22 "CONFIDENTIAL" information shall be filed under seal in an envelope marked
23 "CONFIDENTIAL - Filed Under Seal Pursuant to Court Order" and bear the caption of this
24 case and pleading or document title and such other description as will allow the Court to readily
25 identify the documents or information or portions thereof so designated.

1 14. Nothing in this Order shall be construed in any way as a finding that information
2 designated as "CONFIDENTIAL" actually is "CONFIDENTIAL." Any Party may object, in
3 writing, to the designation by another Party by specifying the information at issue and its
4 grounds for questioning the designation. A Party shall not be obligated to object to the
5 propriety of a designation at the time made, and a failure to do so shall not preclude any
6 subsequent challenge. In the event that any Party objects at any point in these proceedings to
7 the designation by the producing party, the party or parties that have made such designation
8 shall first try to resolve said dispute in good faith on an informal basis. If any party challenges
9 the propriety of a designation, and the parties cannot resolve the dispute, the Party seeking
10 removal of the designation may request a hearing on the filed objection as to the designation.
11 The information, documents or materials shall continue to receive the protection of their
12 designation until the Court rules on the objection. The Party that designated the information
13 "CONFIDENTIAL" shall have the burden of demonstrating that such designation falls within
14 the language of this Order.

15 15. Nothing herein shall be construed to be an admission of relevance or to affect, in
16 any way, the discoverability or admissibility of any documents, testimony or other evidence in
17 this case. This Order is without prejudice to the right of any Party to bring before the Court at
18 any time the question of whether any particular information is or is not discoverable or
19 admissible.

20 16. Nothing in this Order shall bar or otherwise restrict any attorney herein from
21 tendering advice to clients with respect to this case and in the course thereof, referring to or
22 relying upon the attorney's examination of "CONFIDENTIAL" information so long as the
23 attorney does not disclose "CONFIDENTIAL" information.

24 17. The inadvertent or mistaken disclosure by a producing party of
25 "CONFIDENTIAL" information shall not constitute a waiver of any claim of confidentiality
except where: (a) the producing party notifies a receiving party in writing of such inadvertent
or mistaken disclosure within ten (10) business days of becoming aware of such disclosure and,
(b) within thirty (30) days of such notice, the producing party fails to provide properly
redesignated documents to the receiving party. During the thirty (30) day period after notice,

1 the materials shall be treated as designated in the producing party's notice. Upon receipt of
2 properly redesignated documents, the receiving party shall return all unmarked or incorrectly
3 designated documents and other materials to the producing party within five (5) business days.
4 The receiving party shall not retain copies thereof and shall treat information contained in said
5 documents and materials and any summaries or notes thereof as appropriately marked pursuant
6 to the producing party's notice.

7 18. Any document that is authored by a party in this case and is produced by the
8 authoring party is deemed an authentic document. All objections to the admissibility of such
9 documents on grounds other than authentication are hereby reserved.

10 19. The parties will work in cooperation to produce documents in an electronic
11 format or other format as agreed upon by the parties. Documents produced by the parties will
12 be bates stamped and each production response will identify the responsive documents by bates
13 numbers. Parties are further required to use reasonable efforts to place bates numbers on
14 documents in a location so they do not cover any textual material.

15 20. This Order of Confidentiality shall survive the disposition of this case and shall
16 continue in full force and effect thereafter. Within sixty (60) days after final disposition of this
17 lawsuit, including resolution of all appellate proceedings and upon request from producing
18 party's counsel, counsel for the receiving party shall either: (a) return all "CONFIDENTIAL"
19 information in his/her possession, custody or control or in the custody of any authorized agents,
20 outside experts and consultants retained or utilized by counsel for the receiving party to counsel
21 for the party who has provided such "CONFIDENTIAL" information in discovery; or (b)
22 certify the destruction to producing party's counsel.

23 **DONE and ORDERED** this 10th day of December, 2010.

24 
25 UNITED STATES DISTRICT JUDGE